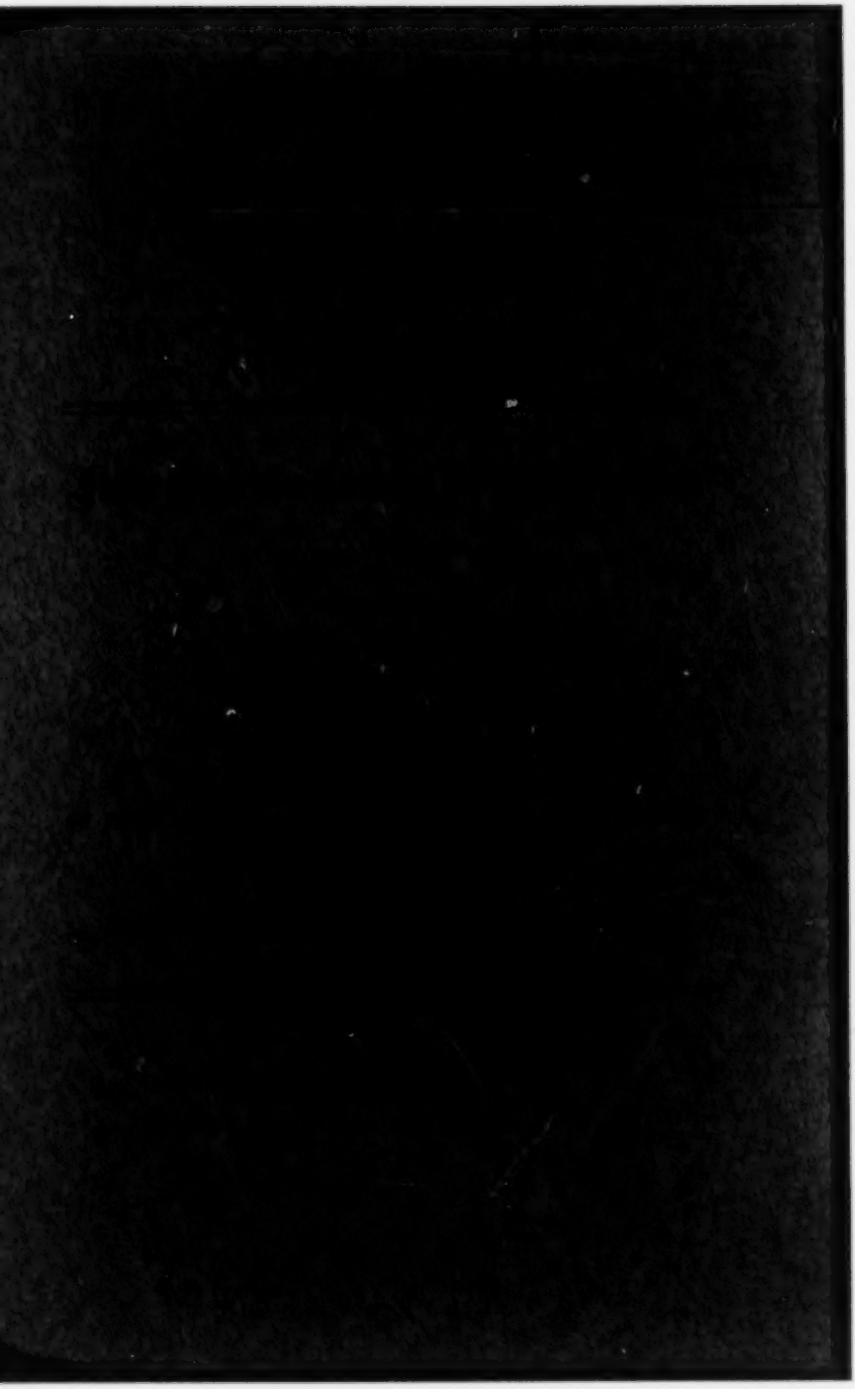
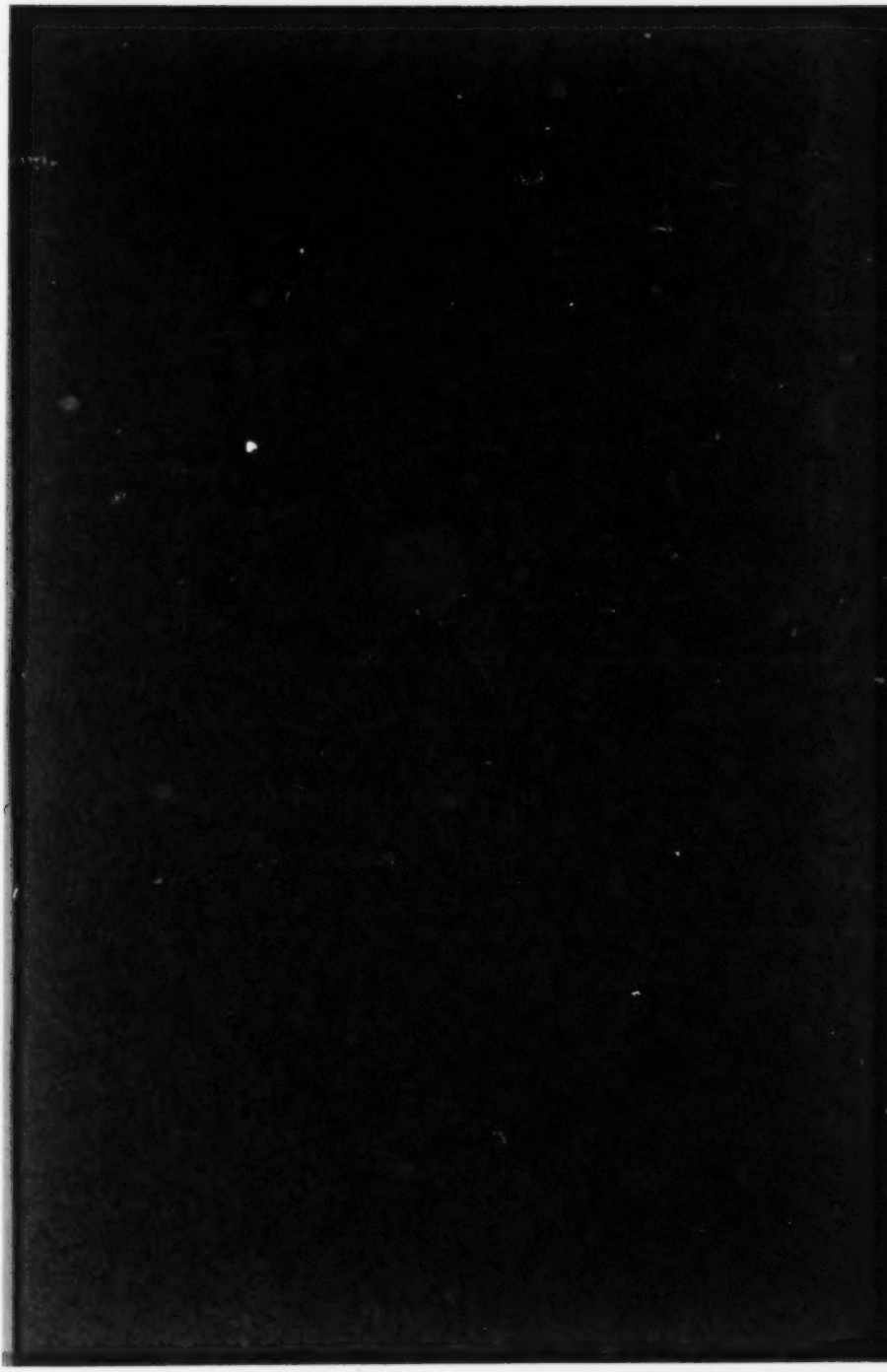




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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 101

THE SEMINOLE NATION, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 45–80) is reported in 102 C. Cls. 565.[1]

JURISDICTION

The judgment of the Court of Claims sought to be reviewed was entered on December 4, 1944 (R.

[1] The opinion deals with two cases, Nos. L–51 and L–208, which were consolidated by order of this Court. (See 316 U. S. 310, 316.) For earlier decisions in No. L–51, see 82 C. Cls. 135, reversed, 299 U. S. 417; 93 C. Cls. 500, reversed in part, 316 U. S. 286. For earlier decisions in No. L–208, see 94 C. Cls. 240, reversed, 316 U. S. 310.

80). A motion by petitioner for a new trial was denied on March 5, 1945 (R. 80). The petition for a writ of certiorari was filed on June 1, 1945. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939, 28 U. S. C. sec. 288 (b).

QUESTIONS PRESENTED

1. Whether there is evidence to support findings of the Court of Claims that (a) during the years 1870 to 1874 the Seminole General Council was not corrupt, venal, and false to its trust; (b) even if it were, the appropriate officials of the United States did not have knowledge thereof when making payments from tribal funds at the request of the Council; and (c), in any event, the Seminole Nation received the benefit of annuities paid to the tribal treasurer and creditors at the request of the Council.

2. Whether there is evidence to support findings that the Seminole tribal officials were not mulcting the Seminole Nation during the years 1899 to 1907, and that the Nation received the benefit of payments made to the tribal treasurer during that period.

3. Whether the finding of a valuation of $7.00 per acre for lands taken is supported by substantial evidence, and whether the court properly allowed interest at the rate of 4% per annum for delay in payment for such taking.

4. Whether the court properly allowed as a gratuity offset $175,000 which was expended by the United States to purchase lands for the Seminole Nation.

STATUTES AND TREATIES INVOLVED

The Act of April 15, 1874, 18 Stat. 29, provides:

> * * * the Commissioner of Indian Affairs, with the sanction of the Secretary of the Interior and the President of the United States, in distributing and paying annuities, interest, or other moneys now due or hereafter to become due to the Seminole tribe of Indians under the provisions of the eighth article of the treaty between the Creek and Seminole Indians and the United States, concluded August seventh, eighteen hundred and fifty-six, shall be authorized to expend the same for such objects as will best promote the comfort, civilization, and improvement of the Seminole Indians, or in his discretion, with the sanction of the Secretary and the President aforesaid, shall be authorized to pay such annuities or any part thereof into the treasury of the Seminole nation to be used as the council of the same shall provide, instead of paying the same per capita according to the terms of said treaty: *Provided,* That said agreement shall provide that the sum of five thousand dollars shall be annually appropriated out of said annuity to the school fund of said tribe: *And provided further,* That the consent of said tribe to such

> expenditures and payment shall be first obtained.

The Act of August 12, 1935, 49 Stat. 571, 596, provides in part:

> In all suits now pending in the Court of Claims by an Indian tribe or band which have not been tried or submitted, and in any suit hereafter filed in the Court of Claims by any such tribe or band, the Court of Claims is hereby directed to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of the said tribe or band; * * *.

The other pertinent statute and treaties involved appear at R. 4–5, 6–7, 37.

STATEMENT

The judgment sought to be reviewed dismisses the petitions in two cases (Nos. L–51 and L–208 in the Court of Claims) consolidated for retrial at the direction of this Court in *Seminole Nation* v. *United States,* 316 U. S. 310, 316. The material facts may be summarized as follows:

No. L–51

Petitioner Seminole Nation sought recovery on various claims against the United States aggregating $1,183,204.48 (R. 3–8). The Court of Claims found petitioner entitled to recover a total of $18,388.30 before consideration of offsets. *Seminole Nation* v. *United States,* 93 C. Cls. 500. This

Court affirmed the judgment insofar as it allowed recovery of $18,388.30, but remanded the case for further findings as to two items, one of $66,422.64 and one of $864,702.58. *Seminole Nation* v. *United States,* 316 U. S. 286.

The $66,422.64 claim, referred to as item 2, was for failure to make direct per capita payments totaling $25,000 per annum during the period from 1870 to 1874 as required by the Treaty of 1856 (R. 4–5). The Court of Claims originally disallowed this item because the payments had been made to the tribal treasurer and creditors of the tribe at the request of the tribal council (R. 46). This Court held that if such payments had been made with actual knowledge that the council was faithless to its own people, the Seminoles would be entitled to recover the sums so paid, less such amounts as were actually expended for the benefit of the tribe. 316 U. S. 286, 296–297. The case was remanded on this item so that the Court of Claims could consider "relevant evidence and other data" and make findings (1) whether the Seminole General Council was corrupt, venal, and false to its trust during the years 1870 to 1874; (2) whether, if such was the fact, the appropriate Government officials knew of such corruption when the payments in question were made at the request of the council; and (3) whether, if so, the tribe received the benefit of the payments. 316 U. S. 286, 300.

After retrial, the Court of Claims, while expressing doubt as to its authority to consider this claim (R. 46–48),[2] determined that petitioner was not entitled to recover on the merits. Upon the findings of evidentiary facts (R. 16–26), the court below concluded that during the years 1870 to 1874 the General Council was not corrupt, venal, or false to its trust; that if it were, the appropriate officers of the United States had no knowledge thereof; and that, in any event, the Seminole Nation received the benefit of the payments in the full amount of $66,422.64 (Findings 7, 8; R. 26; see R. 51–56).

The $864,702.58 claim, referred to as item 5, was for payments made to the tribal treasurer during the years 1899 to 1907 in alleged violation of Section 19 of the Act of June 28, 1898 (Curtis Act), 30 Stat. 495 (R. 6–7). In its earlier decision, the Court of Claims held that Section 19 of the Curtis Act did not apply and disallowed the claim (R. 49). This Court agreed that the Curtis Act had no application, but, as in the case of item 2, remanded for findings (1) whether the

[2] In its petition for rehearing in this Court, the Government raised the question, among others, whether this claim was within the scope of the pleadings and the jurisdictional Acts. The order of remand reserved any legal or equitable defenses the Government might urge. See 316 U. S. 651. Thus this Court's decision did not, as petitioner asserts (Pet. 23–24), finally settle this question.

tribal officers were mulcting the Nation from 1899 to 1907; (2) whether, if so, the appropriate Government officials were aware of the situation; and (3) whether, if such were the case, the Seminole Nation received the benefit of any sums expended by the tribal treasurer. 316 U. S. 286, 301–308. Upon retrial as to these issues, the Court of Claims made lengthy evidentiary findings (R. 26–36) and concluded that the tribal officers were not mulcting the Seminole Nation during the years 1899–1907 and that the Nation received the benefit of all funds expended by the tribal treasurer during that period (Findings 21, 22, 23; R. 36–37, 56–64).

No. L–208

By Treaty of March 21, 1866, 14 Stat. 755, a 200,000-acre tract of land was granted to the Seminoles (R. 37). In the following year, the territory to the west of this tract was set aside for the Pottawatomie Indians (R. 38). In surveying the boundary between these two tracts in 1871 an error was made, resulting in occupation by the Pottawatomies of 10,351.82 acres of the Seminole lands (R. 37–38). Between 1892 and 1913, these Seminole lands were allotted to individual Pottawatomies or sold to white settlers (R. 38, 66). The Court of Claims held that such allotment to Indians or sale to whites constituted a taking of the Seminole lands, and that compensation should be determined by striking an average valuation for

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the period 1892–1913 (R. 66).[3] Upon conflicting evidence the court found the value to be $7.00 an acre, or a total of $72,462.74 (R. 39, 69). Chief Justice Whaley dissented on the ground that the price fixed was too high (R. 80). The Court of Claims awarded interest at 4% per annum from 1899, at which time half of the acreage had been allotted or patented, to the date of judgment (R. 38, 69). The interest was computed to be $130,215.54, which, together with the land value, made a total recovery of $202,678.28 (R. 69).

Offsets

The recovery of $18,388.30 allowed by the court below and this Court in No. L–51 and the recovery of $202,678.28 in No. L–208 total $221,066.58 which petitioner was held entitled to recover. The Court of Claims made findings as to gratuity offsets in the amount of $221,569.20 (R. 39–43, 79), and since this total was larger than the recovery, ordered the petitions in Nos. L–51 and L–208 to be dismissed (R. 45, 79, 80). The only offset which is now challenged is one of $175,000 expended by the United States to purchase lands for the Seminoles.

[3] In *Seminole Nation* v. *United States*, 316 U. S. 310, this Court reversed a judgment of the Court of Claims which had dismissed this claim on the ground that the shortage was more than compensated for by the 175,000 acres purchased for the Seminoles, which is discussed *infra* under offsets.

This transaction arose in the following manner. By Article III of the Treaty of March 21, 1866, 14 Stat. 755 (R. 37), the United States agreed to convey to the Seminole Nation as a new home 200,000 acres which had been purchased from the Creek Nation. Before the new boundary between the two Nations had been surveyed, the Seminoles took possession of their new domain, and through a misunderstanding as to the location of the boundary they were settled on lands retained by the Creeks (R. 39–40, 70). The Seminoles made improvements on the Creek lands with the encouragement of the local Indian agents and were promised by these officials that they would be protected from any loss as a result (R. 40, 70, 106–107). When the survey revealed the error, the United States "in a spirit of generosity" purchased 175,000 acres from the Creeks for $175,000 and conveyed this acreage to the Seminoles, this being in addition to the 200,000 acres promised in the treaty (R. 40, 70, 71). The Court of Claims held that the United States was under no obligation to convey any part of the 175,000 acres to the Seminoles or to make good the promises made by officials without proper authority, and accordingly determined that the expenditure was a proper offset under the Act of August 12, 1935, *supra*, p. 4 (R. 71).

ARGUMENT

No. L–51

1. In *Seminole Nation* v. *United States,* 316 U. S. 286, this Court settled the legal principles applicable to petitioner's claim in item 2 for the payments made to the tribal treasurer or creditors of the Tribe between 1870 and 1874. The sole question is, therefore, whether there is substantial evidence to support the findings of the court below. Petitioner impliedly admits that there is such evidence, for rather than contending that the evidence is lacking, it argues that "the great preponderance of the evidence" supports its claim (Pet. 23). The Government submits that the findings are supported by substantial evidence and are correct.

Perhaps the strongest evidence to support the conclusion that the tribal officers were not, to the knowledge of the Government officials, corrupt, venal, and false to their trust was the passage of the Act of April 15, 1874, *supra,* pp. 3–4. That Act was passed in order to liberalize the 1856 treaty provision (R. 4–5) directing payment of all of the annuities to the individual Seminoles by authorizing the Secretary of the Interior to pay all or part of the annuities into the treasury of the Seminole Nation. Surely the Government officials would not have recommended, nor would Congress have passed such a measure if, to their

knowledge, the tribal officials had been misusing funds paid to them (see R. 24–26; 54–55).[4] The rejection of this Act by the tribal officials (Pet. 29–31), who thus deprived themselves of an opportunity to handle the money, is an indication that those officials were not corrupt. The report of the Indian Agent Ingalls, who had extensive dealings with the Seminole officials, confirms this view (R. 124; see also R. 125–126). The evidence which petitioner relies upon (Pet. 24–34) and the inferences which petitioner seeks to draw therefrom were fully discussed by the court below (R. 15–26, 51–56) and no elaboration thereof is necessary.

The fact that these funds were used to pay long-standing debts of the tribe, salaries of officers, governmental expenses, and the operation of smith shops (R. 21–24; 117–122) supports the finding of the court below that the tribe received the benefit of the payments (Finding 8, R. 26). Petitioner's only suggestion is that members of the tribe were in dire circumstances at the time (Pet. 27). Merely because the members of the

[4] In view of its findings, the Court of Claims was not required to pass upon the further defense that the Act of 1874 and acceptance of it by the tribe in 1879 (R. 95) impliedly ratified payments previously made to the tribal treasurer. The Government reserves the right to urge this contention and its contentions made below and in its petition for rehearing in this Court (see 316 U. S. 651) as to jurisdiction of items 2 and 5 in support of the dismissal of these claims.

tribe might have benefited more if these funds were used for some other purposes does not indicate that the Nation was not benefited by the payments.

2. In disallowing item 5, a claim for $864,702.58 paid by the Government to the tribal treasurer during the years 1899 to 1907, the Court of Claims found that the tribal officers during that period were not mulcting the Seminole Nation (Findings 21, 22; R. 36–37). This finding is supported by substantial evidence which is set forth and discussed in detail in the findings and opinion of the court (R. 26–37, 56–64; see also R. 126–147). Since petitioner merely seeks to reweigh the mass of this evidence (Pet. 34–61), we will not attempt to review it.

Moreover, even if that finding be deemed erroneous in its conclusion that the officials were not corrupt, the further finding that the Seminoles received the benefit of the payments made to the tribal treasurer is itself sufficient to bar recovery (Finding 23, R. 37). Petitioner does not attack this finding except to complain (Pet. 61) that it only applied to disbursements during the years 1899 to 1907. But the period from 1899 to 1907 was the only period at issue, the tribal government having no control over the disbursement of the funds thereafter. (See Act of April 26, 1906, 34 Stat. 137, 143–144.) On the prior hearing of this case, the Court of Claims found that

during the calendar years 1899 to 1906 a total of $815,059.71 was disbursed by the tribal treasurer for such purposes as salaries, schools, blacksmiths, physician, per capita payments to members of the tribe, etc., and that $1,128.88 had been turned over to the Indian agent when the right of disbursement had been taken away from the tribal officers. *Seminole Nation* v. *United States,* 93 C. Cls. 500, 509–510. The balance of $48,513.99 was expended for similar purposes during the first six months of the fiscal year of 1899 and the calendar year of 1907, not covered by the prior finding. See Original Exhibit, Cash Record of the Seminole Nation, pp. 31–34, 68, 284–285, 293–294. In the absence of any challenge to a single item of disbursement, it can only be assumed that the records are correct and that, therefore, the Seminole Nation received the benefit of the payments.

No. L–208

3. From all the evidence in No. L–208 the Court of Claims determined that the average value of the lands in question during the pertinent period from 1892 to 1913 was $7.00 per acre (R. 39, 69).[5] Relying upon the opinions of value of certain witnesses, petitioner attacks this finding as being against the great preponderance of the evidence

[5] The use of the average of values over a period of years was suggested by this Court under similar circumstances in *Creek Nation* v. *United States,* 302 U. S. 620, 622.

(Pet. 61–65). However, Government witnesses valued the land from $2.50 to $7.00 per acre (R. 154–155). To resolve this conflict in the opinion evidence, the court below considered the prices at which Indians, with the approval of the Secretary of the Interior, had sold their allotments within the lands in question or in the adjoining area (R. 68–69). The prices of these sales corroborated the opinions of the Government witnesses.

Petitioner asserts that no consideration should have been given to these sales because they did not reflect true market value and were tainted with fraud (Pet. 63–64), but the reports of the Commissioner of Indian Affairs cited by petitioner (Pet. 64) do not support such an allegation.[6] The 1895 report (H. Doc. No. 5, 54th Cong., 1st sess., pp. 87–88) merely states that deeds reciting unfair considerations were submitted for approval, but does not state that such deeds were approved. The 1896 report (H. Doc. No. 5, 54th Cong., 2d sess., p. 90) represents that attempts were made to purchase the lands below market value, but that deeds were not approved unless the consideration was the full appraised value. The 1898 report (H. Doc. No. 5, 55th Cong., 3rd sess., p. 101) is concerned with the practice of cheating the Indians out of the agreed price

[6] For the convenience of the Court, pertinent excerpts from the reports cited by petitioner are printed in the Appendix, *infra*, pp. 18–21.

after approval and not at all with the fairness of the price. There being nothing of materiality to indicate that prices were too low in the other reports cited or quoted, it is clear that the sales prices were properly considered by the court below. Thus, the finding of the court below is amply supported by substantial evidence. If anything, the value should be lower, as Chief Justice Whaley stated in his dissent (R. 80).

Petitioner also asserts that the court erred in the allowance of interest at the rate of 4% per annum instead of 5% and in the computation of interest due (Pet. 65). As for the rate of interest, the Court of Claims determined that 4% was "the rate the Government in agreements with Indian tribes in the period between the taking and today has agreed to pay on Indian funds in its hands" (R. 69.[7] Moreover, the Act of February 12, 1929, 45 Stat. 1164, as amended, 25 U. S. C. sec. 161a, provides for interest at the rate of 4% per annum upon Indian funds in the United States Treasury for which interest is not otherwise authorized by law.[8] Hence, in its dis-

[7] See *e. g.* the following Acts: March 2, 1895, 28 Stat. 876, 888; April 27, 1904, 33 Stat. 352, 353; June 5, 1906, 34 Stat. 213; March 1, 1907, 34 Stat. 1015, 1038; March 28, 1908, 35 Stat. 51–52; May 30, 1908, 35 Stat. 558, 563; June 30, 1913, 38 Stat. 77, 92–93; May 18, 1916, 39 Stat. 123, 138; June 4, 1920, 41 Stat. 751, 754–755; May 9, 1924, 43 Stat. 117.

[8] In its report on this legislation, the House Committee on Indian Affairs stated that interest rates paid by the Government then averaged 4%. See H. Sep. No. 2320, 70th Cong., 2d sess., p. 1.

cretion the Court of Claims could determine 4% to be a fair rate of interest. Cf. *United States* v. *Rogers,* 255 U. S. 163, 169–170; *Seaboard Air Line Ry.* v. *United States,* 261 U. S. 299, 306. The finding by this Court in *United States* v. *Creek Nation,* 295 U. S. 103, that 5% was a proper rate as applied to the taking of Creek lands should not be conclusive here.

With respect to the alleged error in computation of interest, it is obvious that the difference of $217.39 in the figures of the court below and petitioner arises from the fact that petitioner computed interest to the end of 1944, while the court correctly computed interest only to December 4, 1944, the date of judgment (R. 69, 80).

4. Petitioner's contention (Pet. 65–73) that the Court of Claims erred in allowing a gratuity offset of $175,000 expended for the purchase of lands for the Seminoles is untenable. These lands were purchased for $175,000 from the Creek Nation and were conveyed to petitioner when the error was discovered (R. 40, 70). This conveyance was not required by virtue of the 1866 Treaty or any other agreement with the Seminoles, but being executed in a spirit of generosity, was clearly a proper gratuity offset within the meaning of the Act of August 12, 1935, *supra,* p. 4.

Petitioner recognizes that the United States was under no legal obligation to purchase these lands for the Seminoles, but contends that the expenditure should not be considered a gratuity

offset because Congress did so as an act of reparation for the Government's own error in locating the Seminoles upon the wrong lands and encouraging them to make valuable improvements thereon (Pet. 65–73). Even if Congress intended the transaction to be an act of reparation, this does not change its status as a gratuity, for there was no obligation to do so. At the very most there could only be an obligation to safeguard the improvements made by the Seminoles. As a result of the transaction the Seminoles retained their improvements and also received 175,000 acres for which they had given no consideration. Petitioner's construction of the gratuity offset statute would substantially destroy the effect of that Act because in most, if not all, instances when Congress made gifts to the Indians it was motivated by moral considerations.

CONCLUSION

The decision of the court below is correct. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY 1945.